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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

MUR: 6220
Date Complaint Filed: October 19, 2009
Date of Notification: October 21, 2009
Date of Last Response: March 17, 2010
Date Activated: December 29, 2009
Expiration of Statute
of Limitations: November 4, 2013

COMPLAINANT:

Paul Kromberg

RESPONDENTS:

Obama Victory Fund and Andrew Tobias, in his
official capacity as treasurer
Julie Walden

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 102.17(c)(2)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint alleges that during the 2008 presidential campaign, Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, ("OVF") and Julie Walden, solicited contributions in excess of the Federal Election Campaign Act's (the "Act") individual contribution limits in connection with an artist's portfolio available for contributions of \$20,000. In support, the complaint provides an excerpt from a website page owned by a New York art gallery, <http://www.ioniweyl.com/DNClst.rev.1.09.pdf> ("art gallery website"), which contains two solicitations for contributions, one for the OVF, and one for the Committee for Change. The excerpt from the art gallery website page set forth in the complaint states:

1 ***With a donation of \$20,000 you will receive the complete portfolio of 13 prints.***

2 ***If you are interested in reserving a portfolio, please send a check for the full amount,***
3 ***made payable to the Obama Victory Fund to Julie Walden c/o Obama Victory Fund,***
4 ***1800 Century Blvd East #210 Los Angeles, California 90067. If you have contributed***
5 ***the maximum donation \$28,500 to the Democratic National Committee, you can***
6 ***make the check payable to "Committee for Change." The maximum amount that can***
7 ***be contributed to all party committees is \$65,500.***

8
9 (Italics and bolding as in the complaint).

10
11 **Respondents Julie Walden, who worked for Obama for America at the time of the**
12 **solicitation, and the OVF, a joint fundraising committee comprised of Obama for America and**
13 **the Democratic National Committee ("DNC"), maintain in separate responses that the complaint**
14 **should be dismissed. According to the responses, although Respondents solicited for**
15 **contributions to OVF in connection with an artist's portfolio, they did not see the art gallery**
16 **website solicitation prior to receiving the complaint, and did not explicitly or implicitly authorize**
17 **it. They point out that the \$20,000 solicitation for the OVF for the artist portfolio was well**
18 **within the applicable contribution limits and that the entire solicitation on the art gallery website**
19 **was accompanied by the OVF's standard form that met the notice requirements that the**
20 **Commission's regulations mandate for joint fundraising committee solicitations.**

21 **With respect to the solicitation for Committee for Change, a separate joint fundraising**
22 **committee, which did not include the notice requirements for joint fundraisers, Respondents**
23 **assert that because the solicitation was posted on a website without their authorization, the**
24 **owners of the website were not acting as Respondents' agents. Therefore, according to**
25 **Respondents, they cannot be held liable for the solicitation's failure to include the required**
26 **notice for joint fundraisers with respect to the solicitation for Committee for Change.**

27 **The portion of the art gallery website solicitation for contributions to OVF, coupled with**
28 **the attached OVF joint fundraising notice, complied with the Act and the Commission's**

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1 regulations both in terms of the contribution limits and joint fundraising. With respect to the
2 portion soliciting contributions for Committee for Change without including the required joint
3 fundraising notice, Respondents have denied authorizing the solicitation on the art gallery's
4 website. We have no information to the contrary, nor have we located any other solicitations for
5 OVF in connection with the artist portfolio that also contained a solicitation for Committee for
6 Change or solicited excessive contributions. Accordingly, we recommend that the Commission
7 find no reason to believe that OVF violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.17(c)(2), and
8 no reason to believe that Julie Walden violated the Act and the Commission's regulations, and
9 close the file.

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 Political committees may engage in joint fundraising with other political committees or
12 with unregistered committees or organizations. See 11 C.F.R. § 102.17(a)(1)(i). Joint
13 fundraising activities are governed by procedures set forth in 11 C.F.R. § 102.17(c)(1) through
14 (8), which require, *inter alia*, a written agreement; a fundraising notice; a separate deposit
15 account; and compliance with reporting requirements, contribution limitations, and allocation
16 procedures contained therein. The fundraising notice should include the names of all committees
17 participating in the joint fundraising activity, the allocation formula to be used for distributing
18 joint fundraising proceeds, a statement informing contributors that, notwithstanding the formula,
19 they may designate their contributions for a particular participant, and a statement that the
20 formula may change if a contributor makes a contribution which would exceed the amount that
21 the contributor may give to any participant. 11 C.F.R. § 102.17(c)(2).

22 For the 2008 election cycle, an individual could contribute \$2,300 to a candidate and his
23 authorized political committee for election to a federal office, such as Obama for America, and

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1 Joni Moisant Weyl." See Attachment 1. Following the letter are a formal-looking solicitation in
2 connection with the artist's portfolio, which does not contain any reference to Committee for
3 Change, pictures of the 13 art prints, and the OVF's contribution form containing the information
4 required by the Commission's joint fundraising regulations. According to information available
5 on its current home page, <http://www.joniweyl.com>, Gemini G.E.L. at Joni Moisant Weyl is a
6 New York art gallery that exhibits and represents the Los Angeles-based artists' workshop
7 Gemini G.E.L., and Joni Weyl is the owner of the New York art gallery. A newspaper article
8 reports that Gemini G.E.L. commissioned 13 artists to donate works of art to comprise the
9 "Artists for Obama" portfolio to raise funds for Barack Obama's presidential campaign, and it is
10 "the only art group dealing directly with Obama Victory Fund, the joint fundraising committee
11 authorized by Obama for America and the Democratic National Committee." See Kate
12 Linthicum, *'Artists for Obama' donate prints to raise money for the candidate*, Los Angeles
13 Times, September 29, 2008. Although the New York art gallery may be associated with Gemini
14 G.E.L., Gemini G.E.L.'s website does not contain a solicitation for Committee for Change. See
15 discussion *infra*.

16 In its original response to the complaint, the OVF defended the art gallery website
17 solicitation excerpted in the complaint as if it were associated with it, pointing out that the
18 \$20,000 solicitation for the OVF in connection with the artist portfolio was well within the
19 contribution limits available to the Committee, since the DNC could accept \$28,500 per year
20 from an individual and Obama for America could accept contributions of \$2,300 per election
21 from an individual. The response concluded that "[t]he only solicitation referred to in the
22 complaint solicited an amount well below the maximum allowable to the DNC. And the
23 solicitation itself complied in every respect with the Commission's requirements for joint

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1 fundraising committees." OVF Response dated December 9, 2009. Although the OVF's
2 response correctly stated that the solicitation for OVF did not request excessive contributions, it
3 did not address the solicitation for contributions to the Committee for Change. Accordingly, we
4 sent a letter to the OVF requesting voluntary amplification concerning whether the solicitation
5 for the Committee for Change complied with the Commission's joint fundraising regulations and
6 whether the Committee for Change received contributions as a result of the solicitation.

7 In response, the OVF stated for the first time that while it solicited contributions in
8 connection with an artist portfolio, it had no knowledge of the particular solicitation referenced
9 in the complaint prior to receiving the complaint, and it had not expressly or implicitly
10 authorized it. The OVF further asserted that because the owners of the New York art gallery
11 website were not acting as agents of the Committee, as set forth in 11 C.F.R. §§ 109.3(a) and
12 300.2(b), OVF cannot be held liable for the owners' actions or any failure to comply with the
13 joint fundraising regulations in connection with the solicitation for the Committee for Change.
14 Finally, the OVF stated that it did not find any record of receiving contributions in response to
15 the solicitation excerpted in the complaint. Julie Walden's response to the complaint mirrored
16 OVF's responses, and also asserted that she had no knowledge of personally receiving any
17 contributions in the response to the solicitation on the art gallery website referenced in the
18 complaint.

19 However the solicitation for Committee for Change came to be part of the October 1,
20 2008 cover letter on the art gallery website, there is no link to the Respondents except for the
21 reference to Julie Walden and the New York art gallery's asserted connection with Los Angeles-
22 based Gemini G.E.L., the only art group that reportedly dealt directly with OVF. The Gemini
23 G.E.L. ("Gemini") website, however, includes only a copy of the formal-looking solicitation in

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1 connection with the artist's portfolio found in the multi-page document on the art gallery
2 website, pictures of the 13 art prints, and the OVF's contribution form. Gemini's website does
3 not include the solicitation letter on the art gallery website that contained the solicitation for the
4 Committee for Change. See http://www.geminigel.com/artists_for_obama.pdf. We also located
5 a Committee for Change solicitation on the Internet that appears to make available all the
6 information that is required by the Commission's joint fundraising regulations. See
7 <https://my.democrats.org/page/contribute/CFC>.

8 There is no publicly available information that contradicts the Respondents' assertions
9 that they did not explicitly or implicitly authorize the solicitation letter on the art gallery's
10 website and that they were not aware of any contributions that resulted from it. Moreover, we
11 are not aware of any other solicitations for the OVF that also solicit for the Committee for
12 Change or any that solicit excessive contributions in connection with the artist portfolio.

13 Based on the circumstances discussed above, we recommend that the Commission find
14 no reason to believe Obama Victory Fund and Andrew Tobias, in his official capacity as
15 treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.17(c)(2). We further recommend that
16 the Commission find no reason to believe Julie Walden violated the Federal Election Campaign
17 Act of 1971, as amended, or the Commission's regulations. Finally, we recommend that the
18 Commission close the file.¹

19


¹ The complaint, which focused primarily on the amounts solicited by the OVF, did not name the Committee for Change or the owners of the New York art gallery website as respondents, and the Commission did not notify them of the complaint. There is no publicly available information linking the Committee for Change to OVF's solicitation in connection with the artist portfolio other than the reference on the art gallery website. Further, the Commission's regulations pertaining to solicitations for joint fundraising committees appear to place the responsibility for compliance on the joint fundraising committee and its participating committees, not on private website owners. See 11 C.F.R. § 102.17(c)(1), (2) and (4). Accordingly, we do not recommend that the Commission notify Committee for Change or the owners of the art gallery website of the complaint, and we make no recommendations concerning them herein.

III. RECOMMENDATIONS

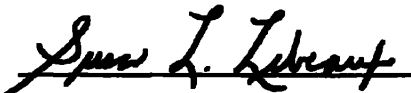
1. Find no reason to believe that Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).
2. Find no reason to believe that Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c)(2).
3. Find no reason to believe that Julie Walden violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations.
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.

3/26/10

Date



Stephen A. Gura
Deputy Associate General Counsel for
Enforcement



Susan L. Lebeaux
Assistant General Counsel



Delbert K. Rigsby
Attorney

Attachments:

1. Solicitation Letter excerpted in the complaint

October 1, 2008

We are pleased to inform you of an artist portfolio on behalf of Barack Obama's 2008 presidential campaign and the Democratic National Committee. The portfolio is being printed by the Los Angeles-based artists workshop, Gemini G.E.L. We are very excited about this project and the opportunity to assist in such a worthwhile cause.

The portfolio contains 13 new prints in editions of 150 each by the following artists: John Baldessari, Jonathan Borofsky, Frank Gehry, Ann Hamilton, Jasper Johns, Ellsworth Kelly, Bruce Marden, Julie Mehretu, Ken Price, Susan Rothenberg, Ed Ruscha, Richard Serra and Richard Tuttle.

With a donation of \$20,000 you will receive the complete portfolio of 13 prints as a gift (the prints are not available individually). If you are interested in reserving a portfolio, please send a check for the full amount, made payable to the Obama Victory Fund to Julie Walden c/o Obama Victory Fund, 1800 Century Blvd East #210 Los Angeles, California 90067.

If you have contributed the maximum donation \$28,500 to the Democratic National Committee in the last year, you can make the check payable to "Committee for Change." The maximum amount that can be contributed to all party committees over the 2007/2008 period is \$65,500.

The offering is limited to the first 150 respondents, and because it is anticipated that the portfolio will be gone very quickly, I encourage you to send your donation as soon as possible. Images of the prints and the official donation form are attached, and can also be viewed at www.joniweyl.com. In the meantime, if you have questions about the donation, please contact Julie Walden at jwalden@barackobama.com or by phone at 310/277-2008 for more information.

Best regards,
Gemini G.E.L. at Joni Moisant Weyl

ATTACHMENT 1
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